

Via Fax: (202) 501-4067

st 15, 2000

FAR Case 2001-014 -916

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVR)
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

**RE: Proposed Rule: FAR Contractor Responsibility, Labor Relations Costs, and
Costs Relating to Legal and Other Proceedings 48 CFR Parts 9 and 31
(FAR Case 99-010)
SUPPORT**

Dear Ms. Duarte:

I am writing on behalf of the over 500 contractors in the painting and decorating, drywall, glazing, floorcovering and allied trades throughout northern and central California and their counterpart labor representatives of the over 10,000 members of District Council 16, International Union of Painters and Allied Trades (I.U.P.A.T.) who constitute the Painting and Drywall Work Preservation Fund membership in support of the above-referenced proposed federal regulations.

The Work Preservation Fund was established over 20 years ago primarily to combat the vast underground economy of contractors who regularly "cheat to compete" against our legitimate law-abiding contractors in order to win award of public contracts. Unfortunately, the practices of these contractors has continued almost unabated over the last 20 years - despite the efforts of organizations such as the Work Preservation Fund - in large part due to lack of enforcement capability on the part of both state and federal enforcement authorities.

Referring to an audit of HUD's enforcement of the Davis-Bacon Act in the 1980's, the HUD Inspector General has concluded: "The government has lost substantial tax revenues because of undisclosed labor wage payments . . . We found a direct relationship between labor standards violations and construction deficiencies. The violations and related construction deficiencies were not identified and corrected because HUD inspections were deficient. . . Because there was no system to identify repeat violators, contractors with labor violation histories continued to work on HUD projects."

520 Third Street, Suite 204
Oakland, California 94607

WORK PRESERVATION FUND
a nonprofit labor/management cooperative venture

Tel: (510) 444-4931
Fax: (510) 634-3022

Ms. Laurie Duarte
FAR Secretariat (MVR)
August 15, 2000
Page 2

918

The proposed regulations will enable federal agencies to inquire and evaluate a contractor's history of labor law compliance and job performance, thereby substantially reducing the number of repeat violators winning award of publicly-funded construction contracts simply because they submitted the lowest possible bid, rather than the lowest responsible, responsive and realistic bid. In the WPF's 20-year history monitoring public construction contracts it has been our experience that low bids -- particularly those well below all other bids -- are quite simply the result of fraud and deception wherein the contractor has no intention of paying unemployment insurance, workers compensation, overtime or prevailing wages to his workers and has every intention of cutting corners wherever possible in the quality of materials and workmanship provided. He is rewarded for this deception by continuing award of public contracts.

Public agencies have long been handicapped in their ability to assess and select "the lowest responsible bidder" in the absence of any tangible guidelines for determining what is "responsible." The proposed federal guidelines provide necessary and long overdue guidance, at last.

The proposed federal regulations are important in that they have the effect of culling out the non-responsible bidders before they get on the job. The Work Preservation Fund was successful last year in obtaining state debarment of painting contractor, Tony Silva Painting, who had accrued some \$500,000 in wage underpayments and over \$200,000 in penalties assessed by the State Labor Commissioner on no fewer than a dozen different publicly-funded state and local construction projects. But this was indeed a pyrrhic victory. Our law-abiding contractors were denied award of those twelve jobs and the local awarding bodies involved were confronted with the additional paperwork and delays involved in working with state enforcement authorities to withhold funds necessary to pay the contractor's employees the monies owed to them and see that the work contracted for was properly completed. State taxpayers were duped into handing over their hard-earned tax dollars to a law-breaker on 12 different occasions prior to the ultimate imposition of a 5-year debarment.

If awarding bodies had responsible bidding laws -- such as the proposed federal guidelines -- available to them at that time -- perhaps seven or eight or ten of our responsible, law-abiding contractors would have been awarded one or more of the twelve different jobs on which this contractor lined his pockets with taxpayers funds before he was finally debarred by the state. The absence of any quantifiable, objective criteria to help public agencies determine a contractor's level of "responsibility" repeatedly and continuously unfairly disadvantages those contractors who follow the law and play by the rules.

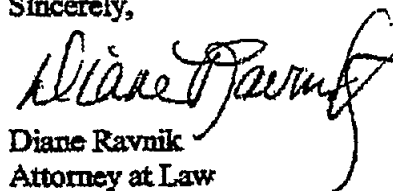
Ms. Laurie Duarte
FAR Secretariat (MVR)
August 15, 2000
Page 3

916

Responsible contractors in California got fed up with the unfair competition they faced in public contracting and in 1999 the legislature passed and Governor Gray Davis signed Legislation (AB 574) authorizing state and local awarding bodies to institute a system in California to prequalify contractors bidding on public works which incorporates much of the same criteria as the current proposed federal regulations requiring contractors to demonstrate a record of financial capability, trustworthiness, labor law compliance and job performance.

On behalf of our California responsible contractors and their counterpart labor representatives, I strongly urge the federal government to follow suit by adopting the proposed regulations amending 48 CFR Parts 9 and 31 (FAR Case 99-010).

Sincerely,



Diane Ravnik
Attorney at Law
Administrator

DR:so

open:29 aff-cio

cc: National Alliance for Fair Contracting